

**MISSOURI DEPARTMENT OF NATURAL RESOURCES  
LAND RECLAMATION COMMISSION**

|                                    |   |                                  |
|------------------------------------|---|----------------------------------|
| In the Matter of:                  | ) |                                  |
|                                    | ) |                                  |
| AA QUARRY LLC                      | ) | Proceeding Under                 |
| AA Quarry Site # 2462              | ) | The Land Reclamation Act,        |
| Johnson County, Missouri,          | ) | Sections 444.760 – 444.789, RSMo |
| New Site Permit Application        | ) |                                  |
|                                    | ) |                                  |
| DAVID EARLS, et al,                | ) |                                  |
| <i><b>Petitioners,</b></i>         | ) |                                  |
|                                    | ) |                                  |
| v.                                 | ) | Permit # 1094                    |
|                                    | ) |                                  |
| DEPT. OF NATURAL RESOURCES,        | ) |                                  |
| KEVIN MOHAMMADI,                   | ) |                                  |
| Staff Director,                    | ) |                                  |
| Land Reclamation Program,          | ) |                                  |
| Division of Environmental Quality, | ) |                                  |
| <i><b>Respondent,</b></i>          | ) |                                  |
|                                    | ) |                                  |
| AA QUARRY LLC.,                    | ) |                                  |
| <i><b>Applicant,</b></i>           | ) |                                  |
|                                    | ) |                                  |

**MEMORANDUM ON PROPOSED STIPULATIONS  
OF UNCONTESTED MATERIAL FACTS**

**Instructions for Response**

The Hearing Officer has reviewed the Proposed Stipulations filed by the parties. Set out below is a Proposed List of Stipulations of Uncontested Material Facts. Where deemed possible proposed stipulations submitted by Applicant and Respondent addressing the same fact or facts have been combined. Petitioner's Proposed Stipulations (*Items 37 – 70*) are set out separately a few are integrated into Proposed Stipulations 1 through 36. After responses from Counsels, the Hearing Officer will further edit as needed and submit a final document for review and approval of the parties.

On or before December 5, 2013, Counsel for each party is to file with the Hearing Officer, copy opposing counsels, as to their position with regard to each Proposed Stipulation that is, Agree or Object. For any Proposed Stipulation objected to, Counsel is to provide an explanatory statement as to the basis for the objection.

**Applicant's and Respondent's Combined  
Proposed Stipulations of Uncontested Material Facts**

**BACKGROUND**

1. Radmacher Land and Equipment Management Company, LLC, a Missouri limited liability company owned by Robert Radmacher and Thomas Radmacher, was formed in the year 2004, with its principal office and place of business located in Pleasant Hill, Missouri (hereafter "RLE").

2. In January 2011, RLE purchased the 520-acre site located on AA Highway in Johnson County, Missouri, which is the subject of this permit dispute.

3. On June 19, 2012, an inspection was conducted by the Department of Natural Resources ("DNR"), Land Reclamation Program. The Land Reclamation Program concluded that limestone rock on the site was not being mined and sold commercially; but was being used for farm purposes and/or personal use of the owner of the property and that no land reclamation permit was needed by RLE to perform such work.

**LD PERMIT NO. 01538**

4. On July 6, 2012, Radmacher Brothers Excavating Co., Inc. (another company owned by the Radmacher Brothers) ("RadBro") applied for and received a "General Operating Permit" under the Missouri Clean Water Law and the Federal Water Pollution Control Act for a portion of the site, effective 7/6/2012 through 2/7/2017.

5. The permit allowed RadBro to engage in "construction or land disturbance activity" (eg., clearing, grubbing, excavating, grading, and other activities . . . ) together with storm water control measures. (*July 6 MSOP MORA01538*)

6. Simultaneous with the issuance of this permit, RadBro furnished a Storm Water Pollution Prevention Plan (SWPPP) dated July 6, 2012 for an estimated construction period of August 30, 2012 through December 31, 2015, noting that the project site was designated for the purpose of "borrow materials" for RadBro's business, and that land disturbance would be allowed for construction of temporary exits, staging

areas, grading, stockpiling, excavation and final grading. The total projected disturbed land was identified as 9.15 acres near the center of the 520-acre site. *(July 6 SWPPP)*

7. DNR Water Pollution Control Program conducted an investigation of the site on November 20, 2012. DNR concluded that the Radmacher Brothers Borrow Site was in compliance with its July 6, 2012 Missouri State Operating Permit (MSOP MORA 01538), the Missouri Clean Water Law, and the Clean Water Commission Regulations. DNR found no evidence that material was being mined and hauled off site for commercial purposes.

8. Another routine DNR site inspection occurred on November 28, 2012, and all of the SWPPP documents were examined. All required records were made available and found to be up to date. The DNR inspector found no violations of MORA01538.

9. On December 14, 2012, Andrea Collier, PE, Regional Director of the Kansas City Regional Office of DNR Water Pollution Control Program, sent a letter to Robert Radmacher for the Radmacher Brothers Borrow Site confirming the DNR conclusions. *(December 14, 2012 DNR letter to AA Quarry - Compliance Inspection and Compliance Report)*

10. On January 30, 2013, the DNR Regional Director of the Water Pollution Control Program, Andrea Collier, P.E., sent a letter to RadBro enclosing a public notice for the proposed "Missouri State Operating Permit to Discharge", directing RadBro (AA Quarry) to post the public notice on a bulletin board at its place of business. A draft of the "Missouri Operating Permit" (General Permit MOG 49 1251) was attached to the letter. *(January 30, 2013 letter from DNR to AA Quarry.)*

#### **PERMIT NO. 072023-14**

11. AA Quarry on December 19, 2012, submitted its "Application for Authority to Construct" to the Missouri DNR Air Pollution Control Program. *(December 19, 2012 letter from Aquaterra (for AA Quarry) to DNR.)*

12. Kyra L. Moore, Director, forwarded a letter dated January 17, 2013, to Robert Radmacher of AA Quarry approving construction activities for a new open pit quarry. *(January 17, 2013 letter from DNR to AA Quarry.)*

13. On July 22, 2013, Susan Heckenkamp, New Source Review Unit Chief of the Air Pollution Control Program of DNR, forwarded a letter to Robert Radmacher for AA Quarry enclosing Missouri Department of Natural Resources Air Conservation Commission "Permit to Construct" (No. 072 013-014).) (*July 22, 2013 letter from DNR to AA Quarry.*) This permit was not appealed to the Air Conservation Commission. Future enforcement of the terms of that permit is through that Commission and the Air Pollution Control Program.

### **AA QUARRY APPLICATION**

14. On July 20, 2012, Tom and Robert Radmacher prepared Articles of Organization for AA Quarry, LLC, ("AA Quarry") a Missouri limited liability company (LC 1243292). The principal office and place of business of AA Quarry, LLC is also in Pleasant Hill, Missouri. The Missouri Secretary of State issued a certificate of organization for AA Quarry LLC on July 20, 2012 (*AA Quarry Articles of Organization*)

15. On November 16, 2012, AA Quarry prepared an application for land reclamation permit (*Permit Application for Industrial Mineral Mines under 10 CSR 40-10.020(1)*).

16. The initial application required amendment and the final application was received by the DNR Land Reclamation Program on or about December 6, 2012.

17. Respondent determined that the application was complete within the requirements of the Land Reclamation Act and implementing regulations. On December 11, 2012, the DNR Land Reclamation Program advised AA Quarry by letter that:

1. The AA Quarry application was complete;
2. Under 10 CSR 40-10.020(2)(H) AA Quarry was required to advertise notice of intent to operate a surface mine in a local newspaper authorized for legal publications; and
3. AA Quarry should send certified mail notices to: (a) contiguous or adjacent landowners and (b) county officials in the county in which the mine was to be located. (*December 11, 2012 letter DNR to AA Quarry*)

18. On December 17, 2012, Robert Radmacher confirmed with the DNR that because the AA Quarry mine plan area utilized a 100-foot setback from the boundary lines of the 520-acre site for mining operation limits, the certified mail notice to contiguous or adjacent landowners was not necessary.

19. AA Quarry satisfied the notice requirements set forth in the regulations and provided evidence to the DNR by submitting an affidavit of publication in a local newspaper and certified mail return receipt regarding the letter sent to the governing authority in Johnson County, Missouri. (*Notice and Affidavit*)

20. DNR Land Reclamation Program advised AA Quarry on January 22, 2013 by certified letter that after the public notices had been given regarding the permit application, DNR had received letters from the public regarding requests for a public meeting. DNR inquired if AA Quarry would agree to a public meeting being held. AA Quarry so agreed. (*January 22, 2013 letter from DNR to AA Quarry.*) AA Quarry proceeded to a public hearing on March 7, 2013.

21. On April 2, 2013, Respondent issued his written recommendation to the land Reclamation Commission to issue a new permit for a total of 214 acres of the 520-acre site. Respondent's recommendation noted that concerns of the public were not all successfully resolved by the public meeting. The recommendation included Attachment 1, summary document prepared by DNR regarding the public hearing comments and staff responses. Respondent reported that he anticipated that members of the public would request a formal hearing and that timely requests and his recommendation would be placed on the agenda for the Land Reclamation Commission's May 23, 2013 meeting. (*April 2, 2013 LRP Staff Recommendation Memorandum*)

22. On April 2, 2013, Tucker Frederickson of the DNR Land Reclamation Program advised Petitioners of their rights to request a public hearing from the Land Reclamation Commission. (*April 2, 2013 letter from DNR to certain Petitioners.*) Petitioners thereafter requested a formal public hearing and between May 1 and May 3, 2013, Kevin Mohammadi advised that the Land Reclamation Commission would decide whether or not to grant a formal public hearing at the meeting on May 23, 2013. (*Example letter from DNR re: Request for Public Hearing and May 23, 2013 LRC Meeting.*)

23. At the May 23, 2013 Land Reclamation Commission meeting, a number of prospective Petitioners appeared and made statements, and after due consideration, the Commission voted to grant Petitioners a formal public hearing.

24. Respondent's determination that the application is complete is not challenged for purposes of the formal public hearing.

25. Respondent's staff has not found that Applicant has conducted mining operations without a permit in violation of the Land Reclamation Act.

#### **LAND DISTURBANCE PERMIT 02837**

26. On or about March 8, 2013, Jimmy Coles of the Water Pollution Control Program orally advised AA Quarry that it should obtain a second land disturbance permit for the dam pond construction area on site which was outside the original Land Disturbance Permit 9.15 acre boundary.

27. On or about March 13, 2013, RadBro applied to the DNR Clean Water Commission for a second land disturbance permit (Missouri State Operating Permit, General Operating Permit No. MORA 02837). This permit also allowed for construction and land disturbance activities at the site and was issued effective March 13, 2013, again through the ePermitting system. (*DNR MSOP No. 02837*).

#### **404 PERMIT**

28. On or about March 5, 2013, Michael T. McFadden, Regional Project Manager of the Kansas City Corps of Engineers office, reviewed Applicant's construction activities at the dam and pond area and determined that Applicant was in noncompliance with General Condition 31 of the Nationwide Permit requiring a pre-construction notification to the Corps of Engineers district office before the start of construction activities.

29. The Corps of Engineers advised that the project could be brought into compliance by Applicant by submitting a pre-construction notification and a permit application to the district office regarding both the work already completed and any work planned in the future.

30. On April 2, 2013, David R. Hibbs, Regulatory Program Manager in the Operational Division of the U.S. Department of the Corps of Engineers Kansas City District, issued to Applicant the official written "Notice of Noncompliance" with Permit No. NWK2013-00247 for the Applicant's project work asserting that the dam/pond work was located in the head waters of "several unnamed tributaries" to the south fork of the Blackwater River, located above Echo Lake. (*April 2, 2013 Corps of Engineers Letter.*)

31. Applicant wrote a letter to Mr. McFadden on March 6 stating that Applicant was authorizing Nathan Hamm, P.E., Vice President Program Manager for SCS Aqua Terra to prepare Applicant's 404 application to bring the project into compliance. Applicant also hired Jim Feagons to perform the associated historical study needed for the permit. (*March 6, 2013 letter from Applicant to Corps of Engineers.*)

32. Applicant sent another letter dated April 4, 2013 to the Corps of Engineers confirming Applicant's intent to bring the project into compliance with all permit requirements. (*April 4, 2013 Letter of Applicant to Corps of Engineers.*)

33. A final 404 application was submitted to the Corps on June 6, 2013. (*Application to Corps of Engineers for 404 Permit.*)

34. The historical study by Mr. Feagons was submitted to the Corps on September 5, 2013.

#### DAM

35. A dam was built on the site beginning in November of 2012 through early 2013. The dam was investigated May 9, 2013, Robert A. Clay, P.E., Chief Engineer Dam and Reservoir Safety Program for DNR. Mr. Clay wrote a letter on May 15, 2013, stating that he was on site May 9, 2013. He measured the height of the dam and surveyed it with an automatic Sokkia level. He determined the height of the dam at less than 35 feet (33.5 feet) and therefore did not require a permit. (*May 15, 2013 letter from DNR.*)

#### SEPTEMBER 4, 2013 COMPLIANCE INSPECTION

36. Land disturbance for some of the property where the quarry is proposed is authorized by permit MORA02837 (effective 3/13/2013 through 2/7/2017) issued by the DNR Water Protection Program. On September 4, 2013, a DNR inspector conducted a

routine water pollution compliance inspection at the site. The inspector found two non compliances or violations of MORA02837. According to the inspection report, Applicant corrected the violations and sent pictures verifying the corrective actions to the DNR inspector on September 5, 2013. The inspector concluded that no further corrective action was required. The site was deemed in compliance by DNR effective September 5, 2013. (*September 20, 2013 letter from DNR to AA Quarry regarding Compliance Inspection and attached Report.*)

### **Petitioner's Proposed Stipulation of Uncontested Material Facts**

37. Petitioners are residents of the area either directly surrounding, or in close proximity to, the proposed quarry site.

38. Prior to obtaining its Missouri State Operating Permit specifically identifying the project, RLE began land disturbance activities on a 9 ½ acre portion of the Proposed Quarry Property. *Photograph of land disturbance that Terraserver, a satellite imaging company, took on February 16, 2012.*

39. Prior to obtaining a Land Reclamation Permit ("LRP"), RLE had rock crushers and excavation equipment (collectively, the "Quarrying Equipment") on the Borrow Site. *Photographs attached to Applicant's Land Reclamation Permit Application; photographic enlargements dated August 27, 2012.*

40. Additionally, and prior to obtaining the LRP, RLE blasted and excavated consolidated limestone material from the Borrow Site. *Google earth Photographs.*

41. RLE provided some of the consolidated limestone material that it blasted and excavated from the Borrow Site to Radmacher Brothers Excavating Co., Inc. ("RadBro"), another company that the Radmacher Brothers own. RadBro entered into a construction contract (the "Contract") with the City of Kansas City, Missouri (the "City"), to provide material, work, and services on a project known as the Choteau Trafficway (the "Choteau Project").

42. RadBro obtained from RLE consolidated limestone material that RLE blasted, excavated, and removed from the Borrow Site (the "Quarried Limestone") to use as road base material, which was within the scope of materials and work that RadBro was obligated to provide and perform under the Contract. *Google earth Photographs;*



43. RadBro incorporated the cost of the Quarried Limestone as part of their Contract.

44. RadBro received all payments due from the City on the Contract, including, without limitation, payment for the cost of the Quarried Limestone.

45. AA Quarry, LLC (“Applicant”) did not send notices by certified mail of its intent to operate a surface mine on the Quarry Property to the last known addresses of all land owners of record owning real property contiguous, or adjacent, to the Quarry Property. *See Answer*, p 5.

46. Applicant did not post the public notification that the Missouri Department of Natural Resources (“DNR”) provided to Applicant at the main entrance to the proposed quarry site. *See Exhibit 2*.

47. Applicant also did not post the public notification sign so that it was visible to the public from the public road that provides access to the main site entrance. *See Exhibit 2*.

48. On May 23, 2013, Petitioners attended a public meeting (the “Meeting”) of the Land Reclamation Commission (“LRC”), presented their statements and evidence, and requested that the LRC grant them standing and formal public hearing before the LRC determined whether to grant Applicant’s permit request. *See Webcast of the Meeting on the DNR website*.

49. During the Meeting, Petitioners presented good faith evidence to the LRC concerning undue impairment that the proposed quarry operation would have on their health, safety, and livelihood as a result of residing in close proximity to the proposed quarry. *Id.*

50. Additionally, Petitioners presented evidence of Applicant’s noncompliance with applicable statutes and regulations, including, without limitation, Applicant’s land disturbance activities and quarry operations prior to seeking and obtaining required permits, together with damage to the environment. *Id.*

51. Following Petitioners statements, the Commission voted to grant a formal public hearing based on all claims that Petitioners advanced during the Meeting. *Id.*; *see also Exhibit 4*, which is an email from counsel for DNR to petitioner David Earls

answering question of what issues or claims that Petitioners advanced at the Meeting could be brought forward at the formal public hearing.

52. Applicant placed fill materials in a stream that the Army Corp of Engineers has designated as the Waters of America (the “**Stream**”), which created a dam. *See Exhibit 5*, photographs taken by Petitioner Jim Martin, an adjacent land owner.

53. On Applicant’s July 6, 2012 ePermit application, Applicant answered “No” to the question of whether its activities would disturb the Waters of America. *See* attachments to Applicant’s Proposed Stipulations.

54. Petitioner, Robert Snyder, contacted an investigator with the DNR Dam Safety Program, Paul Simon, and reported that Applicant, or one of its affiliated entities, had constructed a dam on the Quarry Property (the “**Radmacher Lower Dam**”) and that the Radmacher Lower Dam exceeded the 35 foot height maximum set forth in the regulations governing the DNR Dam Safety Program.

55. Shortly after Mr. Snyder’s complaint, the Department of Dam Safety provided advance warning to Applicant that it would be visiting the Quarry Property within the next few weeks to inspect the Dam, including, without limitation, measuring the height of the Dam, to make sure that Applicant was in compliance with DNR Dam Safety Program regulations. *See Answer*, p 6.

56. The Department of Dam Safety representative further informed Applicant during this discussion that if the Dam exceeded 35 feet in height, the State would be required to regulate the Dam for safety.

57. Upon receiving notification of the pending visit from the Department of Dam Safety, and prior to the actual inspection, which was scheduled for May 9, 2013, Applicant lowered the height of the Radmacher Lower Dam. *See Exhibit 5*.

58. Applicant failed to obtain a new permit before lowering the height of the dam.

59. Applicant removed material from the top of the Radmacher Lower Dam and placed that material at the downstream toe of the dam. *See Exhibit 5*.

60. Applicant failed to put in place any Best Management Practices, as defined in MORA02837 (“Operating Permit 2”), prior to, or after, placing the materials at the downstream toe of the Radmacher Lower Dam.

61. The Radmacher Lower Dam was built as a sediment detention basin to support Applicant's quarry operations, and not as a livestock watering reservoir. *See* Applicant's Land Reclamation Application attached to Applicant's Proposed Stipulations.

62. Applicant has modified the original design of the Radmacher Lower Dam to increase the storage capacity.

63. Previously, on or about March 5, 2013, Michael T. McFadden, Regional Project Manager of the Kansas City Corps of Engineers office, reviewed Applicant's construction activities at the dam and pond area and determined that Applicant was in noncompliance with General Condition 31 of the Nationwide Permit requiring a pre-construction notification to the Corps of Engineers district office before the start of construction activities. *See* Notice of Permit Noncompliance attached to Applicant's Proposed Stipulations.

64. On April 2, 2013, David R. Hibbs, Regulatory Program Manager in the Operational Division of the U.S. Department of the Corps of Engineers Kansas City District, issued to Applicant the official written "Notice of Noncompliance" with Permit No. NWK2013-00247 for the Applicant's project work asserting that the dam/pond work was located in the head waters of "several unnamed tributaries" to the south fork of the Blackwater River, located above Echo Lake. *See* Notice of Permit Noncompliance attached to Applicant's Proposed Stipulations.

65. The width of AA Highway is 21 feet.

66. AA Highway was originally constructed in the 1950s as a farm road.

67. The term "Chip-and-seal" describes a surface pavement applied to a gravel road.

68. Gravel highways do not have solid understructure.

69. According to the Missouri Department of Transportation, approximately 20,000 vehicles pass through the intersection of US 50 and AA Highway per day.

70. There are 535 residences in Johnson County within one mile East and West, and one mile South, of the Quarry Property along AA Highway and US 50. According to the Johnson County Tax Assessor, the market value of these residences is \$68 million. Of these properties, 65% are taxed through the Holden R-11 School District

tax levy. See **Exhibit 6**, listing of properties within this radius of the proposed quarry and their tax assessed values.

SO ORDERED: November 15, 2013.

MISSOURI DEPARTMENT OF NATURAL RESOURCES



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***Certification of Service***

I hereby certify a copy of foregoing has been sent via email this 15<sup>th</sup> day of November, 2013, to:

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W. B. Tichenor  
DNR – Hearing Officer